Supreme Court, U. S.
FILED
DEC 14 1976
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

No. 76-259

Cynthia Gillion - - - - - - Petitioner,

- VS -

People of the
State of Illinois - - - - - Respondent.

BRIEF OPPOSING THE PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, THIRD DISTRICT.

JOSE M. NUNES
Assistant State's Attorney
Will County Courthouse
Joliet, Illinois 60431

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CASES:

New York, ex rel. Rosevale Realty Co. V. Kleinert (1925) 268 U.S. 646, 69 L.Ed. 1135, 45 S.Ct. 618.

Wilson V. Cook (1946) 327 U.S. 474, 90 L.Ed. 793, 66 S.Ct. 663.

STATUTES:

Ill. Rev. Stat., Ch. 37 Sec. 701-20 (1) (1975))

ADDITIONAL STATUTORY PROVISIONS INVOLVED

Illinois Revised Statutes, Chapter 37 Section 701-20 (1) (1975))

> "...At the request of any party financially unable to employ counsel, the court shall appoint counsel."

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REASONS FOR DENYING THE WRIT

In expressing his reasons for this court to grant the Writ of Certiorari, the Petitioner presents for review the following questions:

> Whether the due process and equal protection clauses require the States to
>
> 1. Insure that indigent parents are entitled to appointment of counsel at parental termination proceedings, and
>
> 2. (Insure) that the record of such hearing affirmatively reflect that a parent is fully advised of
>
> (a) (his or) her right to seek appellate review of the final judicial termination of (his or) her parental rights, and
>
> (b) (if indigent, his or) her right to the assistance of counsel and a free transcript on appeal.

(Emphasis and outlining ours).

Based on the fact that the Illinois Statutes in question (Chapter

37 Section 701-20 (1) (1975)) provide that "...At the request of any party financially unable to employ counsel, the court shall appoint counsel." question number one (1) is not at issue.

In considering part (a) of question number two (2), the transcript of proceedings of the present case in the trial court disclosed (P103) that the Petitioner in the presence of her court appointed counsel was duly advised by the court "...this is a final order. It's an appealable order, the one you can appeal from. You have 30 days in which to file your appeal."

Clearly, part (a) of question two (2) is not at issue.

Remaining is part (b) of question two (2) outlined as follows:

> Whether the due process and equal protection clauses require the States to insure that the record of such hearing affirmatively reflect that

> a parent, if indigent, is fully advised of his or her rights to the assistance of counsel and a free transcript on appeal.

This question was not presented to the State Courts nor decided by the State's Highest Court. It simply was never raised.

We contend that this question should have been raised in the State Courts and failure to raise it deprived the Federal Supreme Court of jurisdiction.

> "It is well settled that the Federal Supreme Court is without jurisdiction to review the judgment of a State Court on a Writ of Certiorari by reason of a Federal question which was not raised below, or called to the attention of, or decided by, the State Court." New York, ex rel. Rosevale Realty Co. V. Kleinert (1925) 268 U.S. 646, 69 L. Ed. 1135, 45 S. Ct. 618.

> "The purpose of this (jurisdictional) requirement is to restrict our mandatory jurisdiction on appeal, (citations) and to make certain that no

judgment of a State Court will be reviewed on appeal by this court unless the highest court of the State has first been apprised that State Statute is being assailed as invalid on Federal grounds, (citations) or, when the statute, as applied, is so assailed, until it has opportunity authoritatively to construe it. (citations) This jurisdictional requirement is satisfied only if the record shows that the question of the validity under federal law of the State Statute, as construed and applied, has either been presented for decision to the highest court of the State, (citations) or has in fact been decided by it, (citations) and that its decision was necessary to the judgment, (citations)." Wilson V. Cook (1946) 327 U.S. 474, 90 L.Ed. 793, 66 S.Ct. 663.

CONCLUSION

Because this question was not raised below, we respectfully submit to this court that the Writ of Certiorari should be denied.

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